

Brewster H. Jamieson, ASBA No. 8411122
Shannon W. Martin, ASBA No. 0105028
LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone: 907-277-9511
Facsimile: 907-276-2631
Email: jamiesonb@lanepowell.com
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

FOREST OIL CORPORATION,

Plaintiff,

v.

UNION OIL COMPANY OF CALIFORNIA
d/b/a UNOCAL ALASKA,

Defendant.

Case No. 3:05-cv-00078-RRB

**MOTION FOR RECONSIDERATION OF
THE COURT'S ORDER DENYING UNOCAL'S
MOTION FOR SUMMARY JUDGMENT
(DOCKET NO. 71)**

Defendant Union Oil Company of California d/b/a Unocal Alaska ("Unocal"), by and through counsel, hereby moves the court to reconsider its April 24, 2006 Order (Docket No. 71) which denied Unocal's Motion for Summary Judgment re Equitable Relief ("Summary Judgment Motion") (Docket No. 19). This motion is filed pursuant to Local Rule 59.1.

The Court wrote in the Order at p. 6: "Here, the factors weigh in favor of the Court retaining jurisdiction over the declaratory action claim *without deciding the merits of the claim at this point.*" (emphasis added). While Unocal does not challenge the court's decision on the jurisdictional issue, Unocal believes the parties would benefit from a ruling on the merits of the equitable relief claim, to which the Summary Judgment Motion was principally directed. Unocal respectfully submits that denial of the Summary Judgment Motion while at the same time reserving a

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

decision on the merits of the equitable relief claim places this issue in procedural purgatory, because the merits were the very subject of the motion. Restated, the Order is in error because it ruled on the procedural issue of jurisdiction, while the Summary Judgment Motion was based on the substantive issue of the merits of the equitable relief claim. Therefore, Unocal respectfully urges the court to reconsider the Order and decide the Summary Judgment Motion on its merits.

Unocal argued in the Summary Judgment Motion that Forest Oil was not entitled to injunctive relief under the Declaratory Judgment Act because (1) Forest Oil had an adequate remedy at law through contractual provisions for removal of the Operator, (2) Forest Oil had an adequate remedy at law through money damages, and (3) Forest Oil could not show irreparable harm. For the same reasons, Unocal argued that Forest Oil was not entitled to injunctive relief under Alaska law, nor was Forest Oil entitled to equitable reformation of the contract under the standards of Alaska law. The motion was thus expressly directed to the merits of the equitable relief claim, and not any issue of jurisdiction. Unocal simply did not argue in the Summary Judgment Motion, or the Reply thereto (Docket Nos. 19 and 45, respectively), that this Court did not have the jurisdiction to decide the equitable relief claim. Indeed, through its motion practice Unocal affirmatively wanted this Court to decide the merits of that claim.

In fact, the jurisdictional issue was raised only by plaintiff Forest Oil in its opposition (Docket No. 31) to the Summary Judgment Motion as a red herring to distract the Court from the fact that Forest Oil's equitable relief claims lack merit. As was briefed in detail in Unocal's Reply, Forest Oil's opposition focused almost exclusively on defeating summary judgment through the smokescreen of jurisdiction by arguing at length about the mechanics for achieving declaratory relief under either federal or state law. The Declaratory Judgment Act, however, is merely the conduit

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

through which Forest Oil seeks to achieve injunctive relief, an equitable remedy to which Forest Oil is not entitled as a matter of law. Forest Oil failed to explain why this court should completely ignore the parties' contractual intentions and impose its own judgment on the issue of removal and selection of a successor operator. The issue of whether Forest Oil is entitled to declaratory relief is ultimately immaterial because, even if Forest Oil could achieve declaratory relief, this Court would have to go to the merits of the issue and answer the larger question of whether Forest Oil is entitled to the extraordinary equitable relief demanded in its complaint—the ouster of Unocal and installation of Forest Oil as the operator of the Trading Bay Unit. If Forest Oil is not entitled to equitable relief, then, as a matter of law, there can be no basis for this Court to impose declaratory relief.

Therefore, the essential holding of the Order, that “there does not appear to be any persuasive reason to preclude the Court from addressing the claim for equitable relief” (Order, at p. 6), was never at issue. Unocal never disagreed with that proposition, and never argued that the Court should not address the claim for equitable relief. The very purpose of the Summary Judgment Motion was for the Court to address that claim and hold that, on the merits, the claim should be dismissed as a matter of law because it could not satisfy either the federal or state tests for equitable relief. However, Unocal wishes to make it clear that whether it is entitled to summary judgment on the merits of the equitable relief claim as a matter of law is not the subject of this motion for reconsideration. All Unocal submits is that the Court cannot have denied the motion without also deciding the merits of the claim.

Moreover, both parties to this case would benefit significantly from a decision on the merits of the equitable relief claim, so that they can know whether and to what extent that claim will remain at issue, and tailor their pretrial preparations accordingly. If the court believes that the

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

underlying motion practice or the record on which it was based was insufficient to allow an informed decision on the merits, Unocal respectfully requests that the court give the parties direction so that the Court has all of the information and legal analysis necessary to decide this important issue.

CONCLUSION

The Order is based solely on the issue of jurisdiction over the equitable relief claim, but Unocal never disputed this Court's jurisdiction to consider that claim. Instead, Unocal's Summary Judgment Motion argued that the equitable relief claim should be dismissed because, as a matter of law, Forest Oil could not satisfy the legal standards for equitable relief under federal or state law. Because the Order reserves the question of the merits of the equitable relief claim, there are no grounds to deny the Motion for Summary Judgment which expressly put those merits at issue. Therefore, for the reasons stated above, defendant respectfully requests the court to reconsider its decision, and to rule on the merits of the equitable relief claim.

DATED this 1st day of May, 2006.

LANE POWELL LLC
Attorneys for Defendant

By s/ Brewster H. Jamieson
Brewster H. Jamieson, ASBA No. 8411122
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Tel: 907-277-9511
Fax: 907-276-2631
Email: jamiesonb@lanepowell.com

I certify that on May 1, 2006, a copy of
the foregoing was served by ECF on:

Jeffrey M. Feldman, feldman@frozenlaw.com

s/ Brewster H. Jamieson
017351.0040/154909.1